



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 214

**[Docket No. FR 5339-P-01]
RIN 2502-AI94**

Housing Counseling Program: New Certification Requirements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: HUD's Housing Counseling Program provides, through HUD-approved counseling agencies and state housing finance agencies, including their affiliates and branches, counseling to individuals seeking information about financing, maintaining, renting, or owning a home. The Dodd-Frank Wall Street Reform and Consumer Protection Act amended the housing counseling statute to improve the effectiveness of the program by, among other things, requiring that the entities and individual counselors be certified by HUD as competent to provide such services, and prohibiting distribution of grant funds to agencies found in violation of Federal election laws or who have employees found in violation of Federal election laws, and requiring the reimbursement of grant funds for misuse of funds. This proposed rule would revise HUD's Housing Counseling Program regulations to adopt the new requirements applicable to counseling agencies and individual counselors, and the use of grant funds.

DATES: Comment Due Date: **[Insert date 60 days from the date of publication in the Federal Register]**.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the

Federal Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Ruth Román, Office of Housing Counseling, Office of Housing, Department of Housing and Urban Development, 1250 Maryland Avenue, SW, Room P2206, Washington, DC 20410-8000; telephone number 202-708-0317 (this is not a toll-free number). Persons with hearing or speech challenges may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION

I. Background

HUD's Housing Counseling Program, established pursuant to section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) (1968 Act), authorizes HUD, through HUD-approved organizations and state housing finance agencies, and their branches and affiliates, to provide housing counseling services to potential homebuyers, homeowners, homeowners at risk of default, renters, and the homeless. Housing counseling services include assisting eligible homebuyers find and purchase affordable homes; helping renters locate and apply for affordable rental units; helping homeowners avoid foreclosure; helping renters avoid eviction; assisting the homeless in finding shelter; and reporting fair housing complaints and addressing housing problems. Section 106 of the 1968 Act authorizes HUD to provide counseling directly or to enter into contracts with, or make grants to, eligible private or public organizations with special competence and knowledge in providing housing counseling to low- and moderate-income families.

HUD's regulations for the Housing Counseling Program were promulgated in 2007,¹ and are codified in 24 CFR part 214. The regulations currently define major terms used in the program and the basic services that counseling agencies must provide to clients. The current regulations also delineate criteria that housing counseling agencies are required to meet in order to become and remain HUD-approved housing counseling agencies, explain the application process for agencies seeking to become approved housing counseling agencies, and set forth procedures for termination of an agency's HUD-approved status and related appeal rights.

Subtitle D of title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010)) (Dodd-Frank Act), which consists of sections 1440 through 1453, made several amendments to strengthen HUD's Housing Counseling Program. Section 1442 amended section 4 of the Department of Housing and Urban Development Act (Department of HUD Act) to establish an Office of Housing Counseling within HUD specifically devoted to administration and oversight of housing counseling agencies, individual counselors, and the counseling services offered under the program. Sections 1443, 1444, 1445, and 1448 of the Dodd-Frank Act amend section 106 of the 1968 Act to improve the effectiveness of HUD's Housing Counseling Program by, among other things: defining certain commonly used terms in the program; ensuring that HUD-approved counselors provide counseling covering the entire process of homeownership, from the purchase of a home to its disposition; ensuring that rental or homeownership counseling provided in connection with HUD programs is administered in accordance with procedures established by HUD; and requiring that all HUD-related homeownership counseling and rental housing counseling, provided in

¹ See HUD's final rule published on September 28, 2007, at 72 FR 55648.

connection with any HUD program,² is provided by HUD-certified housing counseling agencies through their HUD-certified housing counselors.

In addition to enhancing the skill and competency of the housing counseling agencies and individual counselors participating in HUD's Housing Counseling Program, HUD, as a result of its experience in administering the program to date, has identified certain changes to the program that would further strengthen the Housing Counseling Program. HUD plans to propose those changes through separate rulemaking. This proposed rule is limited to establishing the new statutory requirements applicable to counseling agencies and individual counselors. HUD's existing regulations for the Housing Counseling Program used the term HUD-approved, which is also used in the 1968 Act, as amended by the Dodd-Frank Act, and the amendments include a definition of "HUD-approved counseling agency." However, the amendments made by the Dodd-Frank Act also use the term "HUD-certified." With respect to counseling agencies, the terms HUD-approved and HUD-certified have the same meaning, and the use of these terms in this rule reflect the interchangeableness of the terms. The use of HUD-certified in connection with individuals reflects the amendment made by the Dodd-Frank Act that mandates that the individual counselors participating in HUD's Housing Counseling Program must be certified.

II. This Proposed Rule

A. New Definitions

Section 1448 of the Dodd-Frank Act defines the terms, "HUD-approved counseling agency," "nonprofit organization," "state," "state housing finance agency" and "unit of local government." HUD adopts the definition of "HUD-approved counseling agency," to replace the

² Section 1443 added section 106(e)(3) and amended section 106(g)(1)(A) to clarify that homeownership counseling or rental housing counseling provided in connection with any program administered by HUD must be provided by HUD-approved counseling agencies.

definition for this term as currently defined in § 214.3. The proposed rule would not replace the current regulatory definition of “state housing finance agency” with the statutory definition provided in section 1448 of the Dodd-Frank Act. With the exception of minor wording changes that are not substantive, the statutory definition of “state housing finance agency” is the same as the current regulatory definition. This rule incorporates the remaining statutory definitions in § 214.3 of HUD’s regulations. In addition to the statutory definitions being added to the regulations, this proposed rule would add a definition of “HUD-certified housing counselor” to reflect the new statutory requirements that the individual counselors must be certified.

The definitions being added by this proposed rule are as follows:

HUD-approved counseling agency. The term “HUD-approved counseling agency” means a private or public nonprofit organization that is—

- (1) Exempt from taxation under section 501(c) of the Internal Revenue Code of 1986; and
- (2) Certified by the Secretary to provide housing counseling services.

HUD-certified housing counselor. A counselor, employed by a participating agency, who has passed the requisite examination and is certified by HUD as competent to provide housing counseling services pursuant to this part.

Nonprofit organization. The term ‘nonprofit organization’ has the meaning given such term in section 104(5) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704(5)), except that subparagraph (D) of such section shall not apply for the purposes of this section.

State. The term “State” means each of the several States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific, or any other possession of

the United States.

Unit of general local government. The term “unit of general local government” means any city, county, parish, town, township, borough, village, or any other general purpose political subdivision of a State.

In addition to the definitions in section 1448 of the Dodd-Frank Act, the Dodd-Frank Act defines the terms “homeownership counseling” and “rental housing counseling.”

Homeownership counseling is defined by section 1443 to mean counseling related to homeownership and residential mortgage loans, including counseling related to homeownership and residential mortgage loans that is provided pursuant to:

(1) Section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20)) pertaining to housing counseling in connection with tenant-based assistance and affordable housing assistance under the HOME program, in the context of eligible activities under the Community Development Block Grant program;

(2) In the United States Housing Act of 1937—

(i) Section 9(e) (42 U.S.C. 1437g(e)) pertaining to housing counseling in connection with the Public Housing Operating Fund;

(ii) Section 8(y)(1)(D) (42 U.S.C. 1437f(y)(1)(D)) pertaining to housing counseling in connection with section 8 tenant-based rental assistance homeownership options;

(iii) Section 18(a)(4)(D) (42 U.S.C. 1437p(a)(4)(D)) pertaining to housing counseling in connection with displacement due to demolition and disposition of public housing;

(iv) Section 23(c)(4) (42 U.S.C. 1437u(c)(4)) pertaining to housing counseling in connection with the Family Self-Sufficiency program;

(v) Section 32(e)(4) (42 U.S.C. 1437z-4(e)(4)) pertaining to housing counseling in connection with public housing resident homeownership programs;

(vi) Section 33(d)(2)(B) (42 U.S.C. 1437z-5(d)(2)(B)) pertaining to housing counseling in connection with conversion of distressed public housing to tenant-based assistance; and

(vii) Sections 302(b)(6), 303(b)(7), and 304(c)(4) (42 U.S.C. 1437aaa-1(b)(6), 1437aaa-2(b)(7), 42 U.S.C. 1437aaa-3(c)(4)) pertaining to housing counseling in connection with Hope for Public Housing Homeownership grants;

(3) Section 302(a)(4) of the American Homeownership and Economic Opportunity Act of 2000 (42 U.S.C. 1437f note) pertaining to housing counseling in connection with the pilot program for homeownership assistance for families with a member who is a person with a disability;

(4) In the Cranston-Gonzalez National Affordable Housing Act—

(i) Section 233(b)(2) (42 U.S.C. 12773(b)(2)) pertaining to housing counseling in connection with community housing development organizations' set-asides from HOME technical assistance funds; and

(ii) Section 258(b) (42 U.S.C. 12808(b)) pertaining to housing counseling in connection with second mortgage assistance for first-time homebuyers;

(5) In the Housing and Urban Development Act of 1968—

(i) Section 101(e) (12 U.S.C. 1701w(e)) pertaining to housing counseling in connection with mortgage assistance provided pursuant to section 235 of the National Housing Act; and

(ii) Section 106 (12 U.S.C. 1701x) pertaining to housing counseling in connection with the general housing counseling program;

(6) Section 220(d)(2)(G) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) (12 U.S.C. 4110(d)(2)(G)) pertaining to housing counseling in connection with prepayments of mortgages under LIHPRHA;

(7) Sections 422(b)(6), 423(b)(7), 424(c)(4), 442(b)(6), and 443(b)(6) of the Cranston-Gonzalez Affordable Housing Act (42 U.S.C. 12872(b)(6), 12873(b)(7), 12874(c)(4), 12892(b)(6), and 12893(b)(6)) pertaining to housing counseling in connection with Hope for Homeowners planning and implementation grants;

(8) Section 491(b)(1)(J)(iii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11408(b)(1)(J)(iii)) pertaining to housing counseling in connection with rural homelessness and rural housing stability grants;

(9) Sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A)) pertaining to housing counseling in connection with Indian Housing Block Grants and Native Hawaiian Housing Block Grants;

(10) In the National Housing Act—

(i) In section 203 (12 U.S.C. 1709), the ultimate undesignated paragraph of paragraph (2) of subsection (b), subsection (c)(2)(A), and subsection (r)(4) pertaining to housing counseling in connection with single-family mortgage insurance; and

(ii) Subsections (d)(2)(B) and (m)(1) of section 255 (12 U.S.C. 1715z-20) pertaining to housing counseling in connection with home equity conversion mortgages;

(11) Section 502(h)(4)(B) of the Housing Act of 1949 (42 U.S.C. 1472(h)(4)(B)) pertaining to housing counseling in connection with the farm housing loan guarantee program; and

(12) Section 106 of the Energy Policy Act of 1992 (42 U.S.C. 12712 note) pertaining to housing counseling in connection with the energy efficient mortgages pilot program.

In addition to this definition of “homeownership counseling,” section 1442 of the Dodd-Frank Act specifies that the scope of homeownership counseling provided by, in connection with, or pursuant to any function, activity, or program of the Department, is to address the entire process of homeownership, including the decision to purchase a home, the selection and purchase of a home, issues arising during or affecting the period of ownership of a home (including refinancing, default and foreclosure, and other financial decisions) and the sale or other disposition of a home.

Rental housing counseling is defined by section 1443 to mean counseling related to rental of residential property, which may include counseling regarding homeownership opportunities and providing referrals for renters and prospective renters to entities providing counseling, and shall include counseling related to such topics provided pursuant to:

(1) Section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20)) pertaining to housing counseling in connection with tenant-based assistance and affordable housing assisted under the HOME program, in the context of eligible activities under the Community Development Block Grant program;

(2) In the United States Housing Act of 1937—

(i) Section 9(e) (42 U.S.C. 1437g(e)) pertaining to housing counseling in connection with the Public Housing Operating Fund;

(ii) Section 18(a)(4)(D) (42 U.S.C. 1437p(a)(4)(D)) pertaining to housing counseling in connection with displacement due to demolition and disposition of public housing;

(iii) Section 23(c)(4) (42 U.S.C. 1437u(c)(4)) pertaining to housing counseling in connection with the Family Self-Sufficiency program;

(iv) Section 32(e)(4) (42 U.S.C. 1437z-4(e)(4)) pertaining to housing counseling in connection with public housing resident homeownership programs;

(v) Section 33(d)(2)(B) (42 U.S.C. 1437z-5(d)(2)(B)) pertaining to housing counseling in connection with conversion of distressed public housing to tenant-based assistance; and

(vi) Section 302(b)(6) (42 U.S.C. 1437aaa-1(b)(6)) pertaining to housing counseling in connection with Hope for Public Housing Homeownership grants;

(3) In the Cranston-Gonzalez National Affordable Housing Act—

(i) Section 233(b)(2) (42 U.S.C. 12773(b)(2)) pertaining to housing counseling in connection with community housing development organizations' set-asides from HOME technical assistance funds; and

(ii) Section 422(b)(6) (42 U.S.C. 12872(b)(6)) pertaining to housing counseling in connection with Hope for Homeowners planning grants;

(4) Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) pertaining to housing counseling in connection with the general housing counseling program;

(5) Section 491(b)(1)(J)(iii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11408(b)(1)(J)(iii)) pertaining to housing counseling in connection with rural homelessness and rural housing stability grants;

(6) Sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A)) pertaining to housing counseling in connection with Indian Housing Block Grants and Native Hawaiian Housing Block Grants; and

(7) The rental assistance program under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) pertaining to housing counseling in connection with rental assistance provided under such section.

As the above definitions reflect, the statutory definitions for “homeownership counseling” and “rental housing counseling” include all current statutorily required or permissible housing counseling in HUD’s programs. The definitions for these terms, to be provided in § 214.3, will not include the long list of HUD programs, as specified in the statute. HUD is cognizant that this list may change as new HUD programs are established, or HUD programs, not currently listed, are directed to provide housing counseling to individuals, or programs become obsolete. However, the regulatory text cross-references the statutory list, and the list of HUD programs for which housing counseling may be provided will be posted on HUD’s Housing Counseling website.

HUD includes in its definition of “homeownership” in § 214.3 the scope of homeownership specified by section 1442 of the Dodd-Frank Act and the HUD programs requirement in section 1445 of the Dodd-Frank Act. Section 1445 of the Dodd-Frank Act specifies that “homeownership counseling” and “rental housing counseling” required or provided in connection with any program administered by the Department be provided only by HUD-approved housing counseling agencies. The definitions of “homeownership counseling” and “rental housing counseling” incorporate that change by clarifying that all HUD programs, which, by statute, are required or eligible to provide housing counseling, are covered by the HUD approval and certification requirements relating to “homeownership counseling” and “rental housing counseling.” The Dodd-Frank Act did not alter any of these statutorily-listed HUD

programs other than to clarify that the housing counseling is to be provided by HUD-approved housing counseling agencies.

B. Counseling that Covers the Entire Process of Homeownership

Section 1442 of the Dodd-Frank Act requires homeownership counseling to address the entire process of homeownership, including the decision to purchase a home, the selection and purchase of a home, issues arising during or affecting the period of ownership of a home (including refinancing, default, and foreclosure, and other financial decisions), and the sale or other disposition of a home. In accordance with section 1442 of the Dodd-Frank Act, paragraph (b)(1) would be amended and a new paragraph (b)(3) would be added to § 214.300 to reflect the statutory requirement that homeownership counseling address the entire process of homeownership. Although HUD is proposing to amend its regulations to reflect this requirement, it is important to note that HUD's Housing Counseling Program has always offered counseling to address the entire process of homeownership. HUD's website on its Housing Counseling Program reflects this,³ as do HUD's annual fiscal year (FY) notices of funding availability (NOFAs) for the Housing Counseling Program⁴.

Section 1451 of the Dodd-Frank Act requires housing counseling agencies to provide materials on home inspection, as part of home purchase counseling. In accordance with this section, a new paragraph (b)(4) would be added to § 214.300 to reflect the requirement that the provision of information regarding home inspections be part of home purchase counseling.

³ See http://portal.hud.gov/hudportal/HUD?src=/i_want_to/talk_to_a_housing_counselor, and <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>.

⁴ See, for example, FY2010 Housing Counseling NOFA at <http://archives.hud.gov/funding/2010/hcpsec.pdf>, HUD's FY2012 Housing Counseling NOFA at <http://archives.hud.gov/funding/2012/hcpnofa.pdf>, HUD's FY2013 Housing Counseling NOFA at <http://portal.hud.gov/hudportal/documents/huddoc?id=2013chcnofa.pdf>.

C. Certification to Provide Counseling

Section 1445 of the Dodd-Frank Act amended section 106(e) of the 1968 Act to require that organizations providing counseling, or individuals providing counseling through such organizations, as authorized by section 106 to provide housing counseling in connection with any HUD program, be certified by HUD as competent to provide such counseling. To become HUD certified under section 106(e), individuals, working with a participating agency, must demonstrate competency by passing a standardized written examination covering six major areas of housing counseling. These areas include: (1) financial management; (2) property maintenance; (3) responsibilities of homeownership and tenancy; (4) fair housing laws and requirements; (5) housing affordability; and (6) avoidance of, and responses to, rental and mortgage delinquency and avoidance of eviction and mortgage default. For an organization to become HUD certified under section 106(e), all individuals through which the organization provides counseling must be certified as competent to provide such counseling. The written examination will be administered by HUD or an entity or entities contracted by HUD. HUD will announce the administrator of the examination with the issuance of the final rule that will follow this proposed rule. While the currently codified regulations approve counseling agencies for participation in HUD's Housing Counseling Program only for a period of up to 3 years, HUD is not proposing reexamination of individual counselors every 3 years. While HUD may consider at some point requiring individual counselors to take courses to maintain their skills and keep up-to-date with homeownership/housing market issues, this proposed rule provides for the examination only to be taken and passed once for an individual to be certified.

Pursuant to section 1445 of the Dodd-Frank Act, the approval criteria at § 214.103(g)(2) would be amended to require that all individuals providing homeownership or rental housing

counseling related to HUD programs be HUD-certified housing counselors. In addition, this proposed rule would add a new paragraph (n) to § 214.103 to provide the certification criteria for housing counselors, housing counseling agencies, and state housing finance agencies. New paragraph (n) would also provide for counseling agencies and individual counselors to be in compliance with the certification requirements of the Dodd-Frank Act, no later than one year after the effective date of the final rule that will follow this proposed rule.

For individual counselors to be certified, as now required under the Housing Counseling Program by the Dodd-Frank Act, HUD must put in place the examination required by statute. HUD recognizes that the examination, which is to be provided, must be one that is easily available to counselors in all 50 states and territories; be a meaningful test of the individual counselor's competency and knowledge base; and be made available in a manner that minimizes costs to the counselor or the nonprofit agency employing the counselor.

HUD recognizes that costs will be incurred as a result of the written examination requirement, but HUD will strive to present the examination in the most cost-efficient way feasible. In pursuit of this objective, HUD reviewed several certification programs to find examinations and testing protocols similar to those required for the Housing Counseling Program, including reviewing the testing requirements currently in place for individual counselors providing counseling related to HUD's Home Equity Conversion Mortgage (HECM) program. Additionally, HUD is specifically exploring online testing. Several organizations and some states have established online testing of housing counselors.⁵ HUD recognizes the convenience that an online or web-based examination would present. HUD believes that it can

⁵ See, for example, NeighborWorks of America, http://www.nw.org/network/training/courses/online_testing.asp; National Association of Housing Counselors and Agencies, <http://www.naccc.us/certification.php>; State of Indiana Housing and Community Development Authority, http://www.in.gov/myihcda/files/Certification_Handbook_2012-2013_5-1-2012.pdf.

provide the examination at a cost that is reasonable and in line with the costs of training and testing offered by other organizations. HUD further addresses the cost of the examination under the heading of Executive Order 12866, in Section III, Findings and Certifications, of this preamble.

D. Requirements Relating to Housing Counseling Grant Funds.

Section 1444 of the Dodd-Frank Act prohibits HUD from providing grants for housing counseling assistance under section 106 of the 1968 Act to any agency that has been convicted for a violation under Federal law relating to an election for Federal office, or any agency that employs an “applicable individual” who has been convicted for a violation under Federal law relating to an election of a Federal office. Examples of such offenses include election fraud, voter intimidation, and voter suppression. Section 1444 defines “applicable individual” to mean any individual who is (1) employed by the organization in a permanent or temporary capacity; (2) contracted or retained by the organization; or (3) acting on behalf of, or with express or apparent authority of, the organization.

Section 1445 of the Dodd-Frank Act prohibits HUD from distributing assistance for counseling activities to an agency unless the agency, or the individuals through which the agency provides counseling, has been certified by HUD as competent to provide counseling. Accordingly, the proposed rule reflects this prohibition, which will become effective, consistent with new paragraph (n) of § 214.103, one year after the effective date of the final rule that will follow this proposed rule.

Section 1449 of the Dodd-Frank Act sets forth specific provisions relating to a finding by HUD that an agency has misused grant funds. Such provisions require that an agency that has been found to have misused funds, within 12 months of the date of the determination of misuse,

reimburse HUD for misused funds and return any unobligated grant funds and that such agency will be ineligible to receive housing counseling grant funds in the future.

In accordance with these statutory provisions, new paragraphs (c) and (d) would be added to § 214.311 to reflect the provisions of sections 1444 and 1449 of the Dodd-Frank Act, restricting the distribution of funds to housing counseling agencies that have been convicted for a violation under Federal law or having been found to misuse grant funds.

III. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. This rule was determined to be a “significant regulatory action” as defined in section 3(f) of the Executive Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

As discussed in this preamble, this proposed rule revises HUD’s Housing Counseling Program regulations to adopt or reflect, through regulatory codification, requirements established in the Dodd-Frank Act, primarily the requirement that individual counselors be certified by

HUD. Prior to the Dodd-Frank Act, HUD had the option, under the Housing Counseling statute to certify only housing counseling agencies, and to date, HUD has only certified/approved housing counseling agencies. The Dodd-Frank Act removed that option and required the certification of individual counselors. The Housing Counseling statute has always required that certification by HUD of either counseling agencies or individual counselors must be done through regulation. For certification of counselors, the Housing Counseling statute requires that the individual must take and pass an examination to be administered by HUD.

Based on HUD's experience in establishing the testing requirements for HECM housing counselors, and in establishing other housing counseling training programs, HUD estimates that it can provide the required certification examination at a cost of approximately \$500 per counselor. This estimate includes the cost of training and study materials, and is in line with fees charged by other private and public organizations administering counseling training and testing. For example, five housing counseling training programs, currently offered throughout the country by various nonprofit and state entities, provide training and testing at a cost ranging from \$100 to \$1,200 per counselor.⁶ Some programs offer training through a multiday, on-site classroom while others provide on-line resources for independent preparation. HUD anticipates offering its certification training and testing through web-based administration software, and consequently believes that the compliance cost of HUD's examination and associated training will be in the lower half of the \$100 to \$1,200 range.

The statutory counseling certification requirement for HUD's Housing Counseling Program provides for HUD to contract with an appropriate entity to administer the examination.

⁶ These training programs include those of the National Foundation for Credit Counseling, NeighborWorks Center for Homeownership Education and Counseling, the Virginia Association of Housing Counselors, and the National Association of Certified Credit Counselors.

HUD's HECM counselor certification program may serve as a model for this requirement.

NeighborWorks America was previously contracted to administer HUD's HECM counselor certification examination and currently administers HUD's HECM counselor training program.⁷

The cost to take the HECM examination is \$100 and a list of examination topics, on-line study materials, and on-line practice exams are available at no cost by the test administrator. The examination is administered at proctored locations across the country.

HUD also reviewed the costs that housing counseling agencies are currently paying for their counselors to undergo some of the existing certifications, required by states or by organizations for membership in their organizations, and their own training requirements. Housing counseling agencies estimate that for each individual counselor to meet required training and certification requirements, the costs range from \$490 to \$7,000, with the average cost at \$3,000. The higher cost includes paying travel expenses, salary while absent but undertaking the test, training classes, examination fees, and lost earnings while the counselor is training and unable to provide counseling. The lower cost includes the cost of the examination and on-line materials only. Since FY 2009, HUD has awarded approximately \$13 million in training grants to housing counseling intermediaries to provide tuition, travel, and lodging scholarships to housing counselors to help reduce training costs to agencies. Since FY 2009, over 12,600 counselors have received training through support from these grants.

Currently, there are approximately 2,500 HUD-approved housing counseling agencies with approximately 8,100 individual counselors. At an estimated cost of \$500⁸ per counselor to

⁷ See NeighborWorks America, "HECM Counselor Resources," <http://www.hecmcounselors.org/> (last visited Aug. 8, 2012).

⁸ The estimate cost includes not only the cost of the examination, but the cost of the training to be provided by HUD. HUD found that all but one certification program offered for housing counseling includes training as part of the cost of the certification examination. Based on this finding and the statutory requirement that HUD provide training in

undertake training and the examination required for certification, the initial cost, nationwide, would total approximately \$4,050,000. The amount of funds that have been available for training grants, as exemplified in the FY 2009 funding year, may be used to help reduce the costs of training and the examination, if so elected by counseling agencies, which are the grantees under HUD's Housing Counseling NOFAs. In addition, HUD envisions working with existing certification programs, required by states or by organizations for membership in their organizations, to coordinate content, avoid duplication, and increase efficiency so training grants provided to HUD-approved housing counseling agencies will go further.

Other statutory changes to improve the effectiveness of housing counseling include increasing the breadth of counseling services so that they are comprehensive with respect to homeownership and rental counseling. As noted earlier, the statutory mandate to provide comprehensive homeownership and rental counseling is not a significant change for HUD's Housing Counseling Program. HUD's Housing Counseling Program currently provides comprehensive homeownership and rental counseling.⁹ The difference may be that an individual counselor, in contrast to multiple counseling agencies, must show competency (through passage of an examination) in identifying and understanding the breadth of homeownership and rental counseling services. Currently, a potential homebuyer or homeowner is likely to seek a housing counseling agency that specializes in a specific area and receive comprehensive counseling by a counselor in that specific area. As a result of increasing the breadth of counseling service

connection with the certification, HUD's estimate is for the cost of the training and the cost of the examination combined. Based on other certification programs, the expectation is that individuals will select the training and the examination as a package. However, under this proposed rule, an individual would not be prohibited from foregoing the training and taking only the examination if the individual so chooses. HUD estimates that the cost of the examination alone would not exceed \$200 and bases this estimate on the HECM test that HUD currently administers for HECM counselors, for which the cost is \$100. Since the examination for housing counseling would be a new test to be administered by HUD and cover several counseling areas, not solely one subject, such as HECM, HUD estimates the cost of the examination alone would fall somewhere in the range of \$100 to \$200.

⁹ See footnotes 3 and 4 in this preamble.

knowledge, a housing counselor providing counseling on a specific area requested by the client would also be trained to identify cross-cutting issues that a client may not have identified when seeking out a specific counselor or during the intake process by the housing counseling agency. Therefore, the potential homebuyer or homeowner will have all potential needs assessed by one counselor, throughout the entire counseling process.

The compliance costs of the rule are costs that primarily must be borne by the individual housing counselor, and an estimate of the costs has been discussed above. There are also costs to HUD; for example, in the development and administration of the examination, and any related training, and monitoring the counseling agencies for compliance. The benefits to the prospective homebuyer or existing homeowner may be the more efficient delivery of housing counseling services if, as a result of the certification process, one counselor may be able to assess all questions of the prospective homebuyer or homeowner. Additionally, the statutory mandate to certify individual counselors may further enhance the high regard of agencies and counselors participating in HUD's Housing Counseling Program.¹⁰

The compliance cost is expected to be \$4 million in the first year and less in succeeding years, for an annualized compliance cost over 5 years of \$1.0 million (\$0.96 million). The general benefits to the borrower and the market from housing counseling are as follows. In 2011, a total of 126,534 loans were modified after seeking assistance from HUD housing counselors. Statistically, borrowers who received loan modifications after receiving post-purchase housing counseling had savings of \$1,320 annually. In addition, foreclosures prevented

¹⁰ The Obama Administration referred individuals and families to HUD housing counseling agencies and counselors as part of the Making Home Affordable programs. See <http://www.makinghomeaffordable.gov/get-started/housing-expert/Pages/default.aspx>. See also <http://www.hopenow.com>.

as a result of housing counseling have an estimated social benefit of \$40,730.¹¹ Consequently, HUD expects the benefits of this rule to equal the projected compliance costs if 124 loan modifications are made and 122 foreclosures are avoided over 5 years as a result of this rule.

Specific Request for Comment: HUD requests comment specifically on the compliance costs, social benefits, and avoidance of social costs as a result of this proposed rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would revise the regulations governing HUD's Housing Counseling Program to reflect changes to the program made by the Dodd-Frank Act, primarily the requirement that individual counselors be certified. As discussed in this preamble, to date, HUD's Housing Counseling Program, under 24 CFR part 214, has only approved or certified the counseling agencies.

While, as a result of requirements imposed by the Dodd-Frank Act, the rule makes some definitional changes, and emphasizes that the homeownership counseling provided by HUD's housing counseling agencies must address the entire process of homeownership, and counseling agencies must provide materials on home inspection, the key change made to the Housing Counseling Program by this rule is the requirement, mandated by statute, to certify individual counselors as skilled to provide counseling in HUD's Housing Counseling Program.

This rule does not impose the cost of certification of the individual counselors on

¹¹ In a recent analysis HUD's Office of Policy Development and Research found that the total "deadweight" lost per foreclosure prevention cost is approximately \$40,730. (See http://www.huduser.org/periodicals/cityscape/vol14num3/Cityscape_Nov2012_impact_lim_sellers.pdf, at page 219.)

counseling agencies. As discussed earlier in this preamble, HUD is aware that some housing counseling agencies currently pay for their counselors to undergo some of the existing certifications required by states or by organizations for membership in their organizations and their own training requirements, but as with any professional licensing system for individuals (e.g., lawyers, doctors, accountants), the costs of certification rest with the individual. Therefore, the impact of certification to be a counselor in HUD's Housing Counseling Programs is primarily an impact on individuals, but HUD acknowledges that this requirement is not without impact on the counseling agencies. HUD recognizes that once this requirement is in place, counseling agencies will not be certified or approved by HUD if they do not have at least one certified counselor in their employ.

HUD nevertheless submits that requirement for individual counselors to be certified, as proposed to be implemented by this rule, will not have a significant economic impact on small counseling agencies. The rule provides a one-year transition period after the effective date of the final rule for individual counselors to be certified. This one-year period coupled with the fact that housing counselors have been aware since enactment of the Dodd-Frank Act that they would have to be individually certified, provides ample notice of the need to be skilled in the required areas. HUD, through its FY 2013 Housing Counseling Training NOFA, is making FY 2013 funds available for training specifically directed to the statutorily specified areas for which certification is required.¹² Additionally, through its annual Housing Counseling NOFAs, HUD-approved counseling agencies can use funds received through these NOFAs for training of their staff. Accordingly, for the time allowed for individual counselors to be certified and for the

¹² See <http://portal.hud.gov/hudportal/documents/huddoc?id=2013htcnofa.pdf>

funding made available to assist in meeting the core areas specified by statute for certification, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule, that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has Federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have Federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March

22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number for the Housing Counseling Program is 14.169.

List of Subjects in 24 CFR Part 214

Administrative practice and procedure; Loan program-housing and community development; Organization and functions (government agencies); Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR part 214 as follows:

PART 214 -- HOUSING COUNSELING PROGRAM

1. The authority citation for part 214 is amended to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 3535(d).

2. In § 214.3, revise the definitions of “HUD-approved housing counseling agency,” and add alphabetically the definitions of “Homeownership counseling,” “HUD-certified housing counselor,” “Nonprofit organization,” “Rental housing counseling,” “State,” and “Unit of general local government,” to read as follows:

§ 214.3 Definitions.

* * * * *

Homeownership counseling. Counseling related to homeownership and residential mortgage loans. When provided in connection with any HUD program, as specified in section 106(g) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) or such other programs as may be specified by HUD, by notice, homeownership counseling includes the decision to purchase a home, the selection and purchase of a home, issues arising during or affecting the period of ownership of a home (including refinancing, default, and foreclosure, and other financial decisions) and the sale or other disposition of a home.

* * * * *

HUD-approved housing counseling agency. A private or public nonprofit organization that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1996; is certified by HUD, in accordance with this part and 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), to provide housing counseling services to clients directly or through an affiliate or branch; and meets the requirements set forth in this part.

* * * * *

HUD-certified housing counselor. A counselor who has passed the requisite examination, is employed by a participating agency, and is certified by HUD as competent to provide housing counseling services pursuant to this part.

* * * * *

Nonprofit organization. Shall have the meaning given in section 104(5) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704(5)), except that subparagraph (D) of such section shall not apply.

* * * * *

Rental housing counseling. Counseling related to rental of residential property, which may include counseling regarding homeownership opportunities, as specified in section 106(g) of Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) or such other programs as may be specified by HUD, by notice, providing referrals for renters and prospective renters to entities providing counseling or counseling related to rental housing topics addressed in any HUD program.

* * * * *

State. Each of the several States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific, or any other possession of the United States.

* * * * *

Unit of general local government. Any city, county, parish, town, township, borough, village, or any other general purpose political subdivision of a State.

3. In § 214.103, revise paragraph (g)(2) and add paragraph (n), to read as follows:

§ 214.103 Approval criteria.

* * * * *

(g) * * *

(2) Staff. All staff providing homeownership counseling or rental housing counseling pertaining to HUD programs must be certified by HUD, and at least half the agency's counselors

must have at least 6 months of experience in duties related to the agency's housing counseling program.

* * * * *

(n) Certification of housing counseling agencies and housing counselors.

(1) HUD will certify housing counseling agencies and housing counselors working for participating agencies as competent to provide homeownership and rental housing counseling, generally, upon successful passage of a standardized written examination administered by HUD, or on HUD's behalf, covering the subject provided in paragraph (n)(2) of this section.

(2) In order to become HUD-certified, individual housing counselors must pass a standardized written examination to demonstrate competency to provide housing counseling in each of the following areas:

- (i) Financial management;
- (ii) Property maintenance;
- (iii) Responsibilities of homeownership and tenancy;
- (iv) Fair housing laws and requirements;
- (v) Housing affordability; and
- (vi) Avoidance of, and response to, rental or mortgage delinquency and avoidance of eviction or mortgage default.

(3) Upon successful completion of the examination, an individual housing counselor working for a participating agency will be issued a "Certification of Competency."

(4) In order to become HUD-certified, a housing counseling agency must demonstrate that all counselors who provide counseling services for the agency are HUD-certified according

to requirements in this section. Upon such demonstration, the housing counseling agency will be issued an agency “Certification of Competency.”

(5) Housing counseling agencies and housing counselors must be in compliance with requirements of paragraph (n) of this section by **[DATE TO BE INSERTED AT FINAL RULE STAGE THAT IS 1 YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE]**.

4. In § 214.300, revise paragraph (b)(1) and add paragraphs (b)(3) and (b)(4), to read as follows:

§ 214.300 Counseling services.

* * * * *

(b) * * *

(1) Housing counseling that enables a client to make informed and reasonable decisions to achieve his or her housing goal.

* * *

(3) Homeownership counseling, except for reverse mortgage counseling, shall address the entire process of homeownership, including, but not limited to, the decision to purchase a home, the selection and purchase of a home, the home inspection process, issues arising during or affecting the period of ownership of a home (including, but not limited to, refinancing, default, and foreclosure, and other financial decisions), and the sale or other disposition of a home.

(4) As part of the home purchase counseling process, participating agencies or HUD-approved housing counselors shall provide clients with such materials as HUD may require regarding the availability and importance of obtaining an independent home inspection.

* * * * *

5. In § 214.311, add paragraphs (c) and (d), to read as follows:

§ 214.311 Funding.

* * * * *

(c) Limitation on distribution of funds. No funds made available under the Housing Counseling Program shall be distributed to:

(1)(i) Any organization that has been convicted for a violation under Federal law relating to an election for Federal office or any organization that employs applicable individuals. For the purposes of this section, applicable individual means an individual who is:

(A) Employed by the organization in a permanent or temporary capacity;

(B) Contracted or retained by the organization; or

(C) Acting on behalf of, or with the express or apparent authority of, the organization;

and

(D) Has been convicted for a violation under Federal law relating to an election for Federal office.

(ii) For the purposes of this paragraph (c)(1), a violation under Federal law relating to an election for Federal office includes, but is not limited to, a violation of one or more of the following statutory provisions related to Federal election fraud, voter intimidation, and voter suppression: 18 U.S.C. 241-242, 245(b)(1)(A), 592-611, and 42 U.S.C. 1973.

(2) A housing counseling agency unless the agency, or the individuals through which the agency provides counseling, has been certified by HUD in accordance with § 214.103(n).

(d) Misuse of funds. If any participating agency that receives funds under the Housing Counseling Program is determined by HUD to have used funds in a manner that constitutes a material violation of applicable statutes and regulations, or any requirements or conditions under which such funds were provided:

(1) HUD shall require that, within 12 months after the date of the determination of such misuse, the agency shall reimburse HUD for such misused amounts and return to HUD any such amounts that remain unused or unobligated for use; and

(2) Such agency shall be ineligible, at any time after the date of such determination of misuse, to apply for or receive further funds under the Housing Counseling Program.

(3) The remedies under paragraph (d) of this section are in addition to any other remedies that may be available under law.

Dated: August 21, 2013

Carol J. Galante
Assistant Secretary for Housing–
Federal Housing Commissioner

[FR-5339-P-01]

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